



THE EMPLOYMENT TRIBUNALS

Claimant: Mr A Kidd

Respondent: SLM

Heard at: Middlesbrough Magistrates Court **On:** 8th May 2019

Before: Employment Judge Martin

Members:

Representation:

Claimant: In Person (supported by his trade union representative
Mr Oscar Jones)

Respondent: Ms B Clayton (Counsel)

RESERVED JUDGMENT

1. The claimant's complaint of unfair dismissal is dismissed. The tribunal does not have jurisdiction to hear the complaint.
2. The claimant's claim for a redundancy payment is also dismissed.

REASONS

1. The tribunal was provided with a small bundle of documents. Mr Paul Ayre, Contract Manager; Mr Martin Miles, Area Manager; and Mr Simon Fearn, Area Manager all gave evidence on behalf of the respondent. The claimant gave evidence on his own behalf.
2. The tribunal considered the following law:
 - 2.1 Section 98(1) of the Employment Rights Act 1996... it is for the employer to show:-
 - (a) the reason (or, if more than one, the principal reason) for the dismissal, and

- (b) that it is either a reason falling within subsection 2 or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
 - 2.2 Section 111(2) ERA 1996 provides that a tribunal shall not consider a complaint of unfair dismissal unless it is presented to the tribunal
 - (a) before the end of the period of three months beginning with the effective date of termination, or
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period.
 - 2.3 Section 207(B) ERA 1996 provides for the extension of time limits to facilitate conciliation through ACAS, whereby time limits are extended during the period of that conciliation process.
 - 2.4 Section 135(1) ERA 1996...an employer shall pay a redundancy payment to an employee if the employee is dismissed by the employer by reason of redundancy.
 - 2.5 Section 139 ERA 1996 states that an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to (a) the fact that his employer has ceased or intends to cease to carry on the business for the purposes for which the employee was employed by him, or to carry on that business in the place where the employee was so employed, or (b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was employed by the employer have ceased or diminished or are expected to cease or diminish.
 - 2.6 The case of **Palmer and Saunders v Southend on Sea Borough Council 1984 IRLR 119** where the EAT held that reasonably practicable is somewhere between reasonable on the one hand and reasonably physically capable of being done on the other. The best approach is to read practical as the equivalent of feasible and to ask whether it was reasonably feasible to present the complaint to the employment tribunal within the relevant period.
3. The issues which the tribunal had to consider were whether the complaint of unfair dismissal was in time. If not to consider whether it was reasonably practicable for the claim to have been presented in time and whether it was presented within a reasonable time period thereafter. If the tribunal had jurisdiction to hear the claim then it had to go on to consider the reason for dismissal and whether the respondent acted reasonably in treating that as a sufficient reason for dismissing the claimant.

4. The other issue which the tribunal had to consider was whether the claimant was entitled to a redundancy payment. In that regard the tribunal had to consider the reason for dismissal and whether a redundancy situation had indeed arisen.
5. The claimant was employed by the respondent as a duty manager. His role was to manage one of a number of leisure centres in the Middlesbrough area.
6. The claimant was initially employed by Middlesbrough Council. He has worked for them since the 1990s. His employment transferred to the respondent in April 2016. At the time of the transfer there were eleven duty officers and five leisure centres being operated in the Middlesbrough area by the respondent. The claimant was not allocated to a specific centre but was allocated to assist the contracts manager at the Middlesbrough Golf Centre. The claimant together with a number of other staff were then seconded back to Middlesbrough Borough Council to work at the Southlands Centre. This occurred sometime after the initial transfer in April 2016.
7. In July 2017 the respondent was informed by the police and the local authority designated officer (LADO) that the claimant was subject to an allegation of sexual assault. A meeting took place with the police and LADO in July 2017, when the respondent was informed about concerns regarding the claimant's employment. These concerns were due to the fact that the claimant came into contact with children as part of his role and bearing in mind the nature of the allegations made against him, which related to an allegation of sexual assault against a child. The police and LADO therefore indicated that there were concerns about a risk of safety to children with the claimant continuing in his employment.
8. As a result the respondent suspended the claimant on full pay on 24th July 2017 following the meeting with the police and LADO. The claimant was informed of the reason for his suspension.
9. Over the next few months, the respondent met the claimant on a number of occasions to provide him with support. At the same time the respondent sought to try and find out from LADO the up to date position regarding the progress of the police investigation. They made various enquiries about progress of the police investigation over the period of the claimant's suspension.
10. At the end of February the respondent made further enquiries with the police and LADO to ascertain the position as at their last meeting with the claimant he had suggested that there might be some possible changes to his home circumstances which the respondent thought might impact on whether the claimant could look at returning to work.
11. The respondent was informed by LADO that the claimant could only return to work with children if he informed all customers under the age of eighteen and their parents; and all employees under the age of eighteen and their parents of the allegations against him.

12. The respondent considered that it was impractical to comply with those restrictions. The claimant believed that it was impractical to inform customers under eighteen and their parents of those restrictions.
13. During the course of the next few months the respondent looked at alternative work for the claimant and liaised with him with regard to alternative suggestions. They considered overnight maintenance work and administration work. However, they concluded that neither were either available or feasible.
14. By July 2017 LADO had informed the respondent that the investigations into the allegations against the claimant were ongoing. They informed the respondent that, because the allegations were historic, it was not clear when they would be concluded. It appears that these investigations are still ongoing today. The tribunal considers this to be a clearly unsatisfactory situation for all parties concerned.
15. On 27th July 2018 the respondent dismissed the claimant for some other substantial reason with three months' notice. The decision to dismiss the claimant was confirmed at a reconvened meeting. The claimant was represented by his trade union representative Mr Jones.
16. The claimant appealed against the decision. An appeal hearing took place in September 2018. The dismissal was upheld. The claimant was again represented by his trade union representative, Mr Jones, at the appeal hearing.
17. A discussion took place at one of the meetings between the claimant and the respondent in March 2018 when they discussed possible outcomes. This included a discussion about possible alternative work, but also about a settlement agreement or redundancy. The claimant also indicated at that meeting that he might have to consider proceeding to an employment tribunal.
18. The secondment arrangement for those employees seconded from the respondents back to Middlesbrough Borough Council was terminated towards the end of 2017. All of the employees seconded to Middlesbrough Borough Council under that secondment arrangement returned to the respondent company. The respondent says that there was no redundancies at that stage. The respondent said that, if the claimant could have returned to work, there would have been a role for him, as was the case with all the other returning employees.
19. A number of the duty officers have subsequently left the respondent company. This was in or around February/March 2018. They left for various reasons but none of them was on the grounds of redundancy. The respondent says that there was no redundancy situation and no redundancies took place.
20. The claimant contacted ACAS for early conciliation on 17th September 2018. The ACAS conciliation concluded on October 17th 2018. The claimant identified the respondent as SLM Everyone Active. He indicated their address as that on the claim form subsequently accepted.

21. In or around September 2018 the claimant's trade union ceased to act for him. They did however inform him of the time limit for bringing a claim of unfair dismissal.
22. The claimant said in evidence to the tribunal that he himself had undertaken some research and was aware of the time limits for bringing an unfair dismissal claim. He also said in evidence that he had found the whole situation regarding the police investigation very stressful and that it continued to affect him to up the end of 2018.
23. On 20th November 2018 the claimant issued a claim in the East Midlands Employment Tribunal for unfair dismissal and a redundancy payment.
24. That claim was rejected on 26th November 2018 because the claimant had given the wrong ACAS number and there was a different name and address for the respondent on the claim form as set out on the ACAS certificate. The letter was sent by post to the claimant.
25. The claimant said that he had put a different ACAS number on the form because he said that his trade union had also entered into early conciliation with ACAS on his behalf and he had mistakenly quoted that number.
26. The claimant subsequently issued the claim in these proceedings for unfair dismissal and redundancy payment on 1st December 2018. His claim was accepted.
27. This Tribunal finds that it does not have jurisdiction to hear the claimant's claim of unfair dismissal.
28. The claim for unfair dismissal is out of time. The claimant's employment terminated on 27th July 2018 with three months' notice. Accordingly the time limit would expire on 26th October 2018. He entered into ACAS early conciliation on 17th September 2018 which ended 30 days later. Therefore the time limit for him to bring his complaint was extended to 25th November 2018. His claim was not actually presented and accepted until 1st December 2018. Accordingly, his claim is out of time.
29. This tribunal considers that it was reasonably practicable for the claimant to have brought his claim in time. Indeed he did submit a claim in time in a different region. That claim was rejected due to the fact that he had entered the wrong ACAS conciliation number and wrong details for the respondent. The claimant gave no explanation as to why he had waited until just before the time limit was due to expire, before bringing these proceedings, other than indicating that he was still suffering from stress as a result of the police investigation. No evidence was presented from him suggesting that he was suffering any more than he had been suffering over the period of his suspension; during the period of the ACAS conciliation; or during the period when he had first attempted to issue these proceedings.

30. Furthermore the Tribunal notes that the claimant was aware of both his right to bring a claim of unfair dismissal and of the time limits to bring such a claim. He was told of the time limit by his trade union representative and was aware of the time limit from his own research.
31. Accordingly this Tribunal finds that there was nothing stopping the claimant from bringing his claim in time and that it was feasible for him to have done so. For those reasons this tribunal finds that his claim is out of time and the Tribunal has no jurisdiction to hear it.
32. The reason for the claimant's dismissal was for some other substantial reason. It is clear that the reason for the claimant's dismissal in this case related to the allegation being investigated by the police, as a result of which restrictions were placed on the claimant's contact with children in his role, following advice given by the police and LADO. He was suspended for over a year for that reason. That was the reason why he was ultimately dismissed.
33. The Tribunal does not find that there was any redundancy situation either in July 2018, when the claimant was dismissed or indeed at any earlier stage that year or the previous year. There was no requirement for less employees to carry out work of the kind undertaken by the claimant. Accordingly, if there was no redundancy situation the reason for the claimant's dismissal could not have been on the grounds of redundancy.
34. Accordingly for that reason his claim for redundancy payment fails as well.

EMPLOYMENT JUDGE MARTIN

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 31 MAY 2019**

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